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{ REPORT
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NATIONAL PARK FOUNDATION

JUNE 27, 1996.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1703]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1703) to amend the Act establishing the National Park Foundation, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the Act of December 18, 1967 (U.S.C. 19e–19n), entitled “An Act to establish the National Park Foundation”, is amended:

(1) in section 1—

(A) by striking “therein” and inserting in lieu thereof “therein, and to develop and implement means of securing funds from the private sector, to enhance funding for the National Park System without supplanting appropriated funds otherwise available for the National Park System,”; and

(B) by striking “to accept and administer such gifts”;

(2) in section 3—

(i) by inserting “(a)” after “SEC. 3.”; and

(ii) by inserting at the end:

“(b)(1) In furtherance of the purposes of this Act, the Foundation shall have exclusive authority to license or authorize persons to use such trademarks, tradenames, signs, symbols, emblems, insignia, logos, likenesses or slogans that are or may be in the future adopted and owned by the Foundation, and for which the Foundation has filed an application or applications with the U.S. Patent and Trademark Office, for the purposes of representing, promoting or advertising for commercial purposes or pecuniary gain that an individual, company, or particular good or service is an official sponsor or official supporter of the National Park System or National Park Service.

“(2) The authority provided in paragraph (1) shall be subject to the following conditions:

“(A) The criteria and guidelines for the competitive issuance and the maintenance of a license or authorization, and the issuance of each license or author-

ization, shall be subject to the prior written approval of the Secretary as being appropriate to the image of the National Park System and consistent with the management policies and practices of the National Park Service, and such approval authority may not be delegated.

“(B) Neither the Secretary of the Interior, the Foundation, nor any other person may authorize an individual, company, or particular good or service to represent, promote, or advertise, and no person may represent or imply, for commercial purposes or for pecuniary gain that it is an official sponsor or official supporter of any individual unit of the National Park System.

“(C) The advertisements and promotional activities undertaken by a licensee or authorized person shall be appropriate to the image of the National Park System and consistent with the management policies and practices of the National Park Service.

“(D) Neither the Secretary of the Interior, the Foundation, nor any other person may authorize an individual, company, or particular good or service to represent that it is endorsed by the National Park Service.

“(E) Nothing in this Act shall in any way restrict or preclude the Statue of Liberty–Ellis Island Foundation, Inc. (the “Statue of Liberty Foundation”), so long as its activities are authorized by a Memorandum of Agreement with the Secretary of the Interior, from raising donations for the restoration of the Statue of Liberty and Ellis Island by, among other things, offering to any third parties exclusive rights to any trademark, tradename, sign, symbol, insignia, emblem, logo, likeness, or slogan owned by the Statue of Liberty Foundation.

“(F) Activities of the Foundation undertaken pursuant to this Act, including the licensing or authorizing of official sponsors and official supporters of the National Park System or National Park Service by the Foundation, shall not preclude charitable organizations or cooperating associations from conducting fund-raising activities or selling merchandise to generate support for a unit or units of the National Park System or the National Park Service, so long as such activities do not convey a right to be considered as an official sponsor or official supporter of such unit or units as prohibited by subparagraph (B) or of the National Park System or National Park Service.

“(c) No license or authorization referred to in subsection (b) shall grant any person any right or authority to market, advertise, display, sell, or promote, any goods, products or services in any unit of the National Park System or in any related facility operated outside the boundaries of any unit, or to advertise or promote that it is an official sponsor or official supporter within the meaning of subsection (b) in any such unit or related facility: *Provided*, That the Secretary of the Interior may authorize limited recognition of official sponsors or official supporters within the meaning of subsection (b) in units of the National Park System or any related facility operated outside the boundaries of any unit but only under such appropriate policies and procedures which ensure that status as an official sponsor or official supporter within the meaning of subsection (b) shall not be commercially exploited in any manner within any such unit or related facility.”;

(3) in section 4—

(A) by inserting “and section 8(b)” between “transfer” and the comma;

(B) by inserting “license,” between “lease,” and “invest”; and

(C) by striking “any business, nor shall the Foundation” and inserting in lieu thereof “business for pecuniary profit or gain, except for the purposes set forth in this Act; operate any commercial establishment or enterprise within any unit of the National Park System; engage in any lobbying activities as defined in section 3(7) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(7)) concerning the management of the National Park System; or”;

(4) in section 8—

(A) by inserting “(a)” after “SEC. 8.”; and

(B) by inserting at the end:

“(b) All of the income in the Foundation, net of reasonable operating expenses, any contributions to local government pursuant to subsection (a), and reserves determined necessary or appropriate by the Board, shall be provided to or for the benefit of the National Park Service: *Provided*, That all such net income derived from the licenses and authorizations referred to in section 3(b) shall be expended in accordance with policies and priorities of the National Park Service on programs, projects, or activities that benefit the National Park System or National Park Service as identified by the Secretary in consultation with the Foundation.”;

(5) in section 10—

(A) by inserting “(a)” after “SEC. 10.”; and

(B) by inserting at the end:

“(b) Within 30 days of the execution of each license or authorization referred to in section 3(b), the Foundation shall transmit a copy thereof to the Committee on Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

“(c) No later than 5 years after the date of enactment of this subsection, the Secretary of the Interior shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report assessing the cost, effectiveness, and effects of the licensing and authorization program established pursuant to section 3(b). The report shall include, but not be limited to, assessments of the effect of such program on—

“(1) visitation levels in the National Park System;

“(2) the image of the National Park System;

“(3) achievement of the needs and priorities of the National Park Service;

“(4) appropriations for the National Park System; and

“(5) the costs of the Foundation and the Secretary of the Interior to administer the program.”.

(6) at the end, by inserting:

“SEC. 11. Whoever, without the authorization of the Foundation, uses for purposes of trade, to induce the sale of any good or service, to promote any commercial activity, or for other commercial purpose the name of the Foundation or any trademark, tradename, sign, symbol, emblem, insignia, logo, likeness, or slogan referred to in section 3(b)(1), or any facsimile or simulation thereof tending to cause confusion, to cause mistake, to deceive, or to suggest falsely that an individual, company, or particular good or service is an official sponsor or official supporter of the National Park System or National Park Service, shall be subject to suit in a civil action by the Foundation for the remedies provided in the Act of July 5, 1946, 60 Stat. 427 (15 U.S.C. sec. 1051 *et seq.*).

“SEC. 12. Section 1 of Public Law 88–504 (36 U.S.C. 1101), as amended, is further amended by adding at the end, ‘(78) The National Park Foundation.’”.

PURPOSE OF THE MEASURE

The purpose of S. 1703 is to authorize the National Park Foundation to engage in business relationships with appropriate private partners to raise revenue for the National Park System, including authorizing or licensing such private entities as “official sponsors or supporters” of the National Park System.

BACKGROUND AND NEED

The National Park Foundation was established by Congress on December 18, 1967 (Public Law 90–209) as the official, nonprofit partner of the National Park Service. The Foundation provides a vehicle for donors who want to contribute to the National Parks with assurances that gifts will be carefully managed and used wholly and exclusively for the purpose specified by the donor. The Foundation is currently authorized to solicit, accept and administer gifts of real and personal property and utilize them for the benefit of the National Parks.

The Foundation provides a direct way for individuals, corporations and private foundations to help conserve and preserve the natural, cultural and historical value of the National Parks for the employment of future generations. The Foundation also raises money for the Parks through cause-related marketing programs.

The Foundation is governed by a Board of civic and business leaders. By law, the Secretary of the Interior serves as Chairman of the Board and the Director of the National Park Service serves as Secretary of the Board.

A partnership between the public and private sector, the Foundation provides direct support for park units through a competitive program that grants venture capital to seed creative efforts to con-

serve park resources. With the help of private partners, The National Park Foundation has made grants totaling over \$10 million to support projects in the National Parks during the last five years.

Administration funding requests and Congressional appropriations are not keeping pace with increased visitation and other demands placed on the National Park System. With the current demands on Congress to balance the budget and eliminate the Federal deficit, it will be more difficult than even for Congress to authorize sufficient funding. There is a need for additional support to protect, conserve and enhance our National Parks, and the National Park Foundation is well positioned to meet that need.

The National Park Foundation Act explicitly states that the Foundation "shall not engage in any business." This prohibition on engaging in business is unique among the three national conservation associations established by Congress. In most respects the acts establishing the three foundations are quite similar. In fact, the Senate Committee report states twice that the National Fish and Wildlife Foundation was modeled after the National Parks Foundation. The laws establishing both the National Fish and Wildlife Foundation and the National Forest Foundation, however, expressly permit those foundations to conduct business. The legislative histories of the three acts provide no enlightenment on why the prohibition on engaging in business was included in the National Park Foundation Act and omitted in the National Fish and Wildlife Foundation Establishment Act and the National Forest Foundation Act. The proposed legislation would modify this prohibition.

As commercial advertisers have long demonstrated, the National Parks have great commercial value. The National Park Foundation believes that with the new authority provided in this bill, it can annually raise significant revenues without in any way compromising the integrity or traditions of the Parks.

LEGISLATIVE HISTORY

S. 1703 was introduced by Senators Murkowski, Johnston, Bennett and Kempthorne on April 25, 1996. Senator Lieberman was added as a cosponsor on June 4, 1996. The Parks, Historic Preservation and Recreation Subcommittee held a hearing on the bill on June 6, 1996. Senator Campbell was added as a cosponsor on June 6, 1996. At the business meeting on June 19, 1996, the Committee on Energy and Natural Resources ordered S. 1703, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 19, 1996, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 1703, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 1703, the Committee adopted an amendment in the nature of a substitute. The amendment makes a number of technical, clarifying and conforming changes.

S. 1703 as introduced modified the Foundation's prohibition on engaging in business, providing authority similar to that already granted to the National Fish and Wildlife Foundation and other congressionally chartered foundation. The bill also provided a method of raising revenue in support of the National Park System through a sponsorship program. The Committee amendment adds guidance and a series of restrictions on the sponsorship program to ensure that the public interest is served. The following is a summary of those changes:

1. The Foundation must file an application with the U.S. Patent and Trademark Office for any logo or slogan associated with the official sponsorship program.

2. In addition to approving each official sponsor, the Secretary of the Interior must approve guidelines and criteria for the selection of official sponsor licensees and maintenance of the licensees.

3. Official sponsors must be selected competitively from candidates which meet the selection criteria and guidelines.

4. No one may become an official sponsor of an individual unit of the National Park System.

5. The National Park Foundation must transmit each executed sponsorship contract to the House Resources Committee and the Senate Energy and National Resources Committee within 30 days.

6. An official sponsor may not sell, advertise or promote its goods, products or services within a unit of the National Park System or in a related facility operated outside the boundaries of any unit.

7. Only with the approval of the Secretary of the Interior may an official sponsor receive limited in-park recognition; however, such recognition shall not allow commercial exploitation within the parks.

8. Any advertising or promotional activities conducted by an official sponsor must be appropriate to the image of the National Park System.

9. No official sponsor can represent that its company, product or service is endorsed by the National Park Service.

10. The ability of friends groups and cooperating associations to conduct authorized fund raising for individual parks is explicitly protected.

11. The National Park Foundation must spend the funds raised through this sponsorship program in accordance with the policies and priorities of the National Park Service, after retaining funds for reasonable operating and other expenses.

12. Penalties for unauthorized use of the Foundation sponsorship program are limited to those available under the Lanham Act.

13. In addition to its current yearly reporting requirements to Congress, the National Park Foundation will now be subject to a complete annual audit in accordance with a federal law governing audits of Congressionally-chartered entities.

14. Within five years of enactment, the Secretary of the Interior must submit a report to Congress which assesses the cost, effectiveness and impact of this official sponsorship program.

SECTION-BY-SECTION ANALYSIS

S. 1703 amends the 1967 Act to establish the National Park Foundation.

Paragraph 1 adds private sector fundraising to the 1967 Act's statement of purpose, and clarifies that the new authority is to provide funding not generally available for the National Park Service. These funds are intended to supplement appropriated funds and are not intended to be used for fixed operating costs or permanent employee salaries, except in unusual circumstances.

Paragraph 2 amends section 3 of the 1967 Act, by adding new subsections (b) and (c) to the existing statute to augment the authority to conduct business provided by paragraph 3 of S. 1703. New section (b)(1) establishes the Foundation's exclusive authority to conduct a corporate sponsorship program as a fundraising activity in support of the National Park System. Corporate sponsors and others licensed by the Foundation will be able to use logos, slogans, and other marks as developed by the Foundation for the purpose of advertising their official sponsorship or official support of the National Park Service or National Park System. The Foundation will be required to file applications for such logos, slogans, etc., with the U.S. Patent and Trademark Office, to ensure that the Foundations's marks are not in conflict with the registered trademarks of others. This authority to license official sponsors or official supporters is similar to that provided by the Congress to the United States Olympic Committee in the Amateur Sports Act of 1978, but with more numerous and rigorous limitations (provided in subsection (b)(2), (c) as described below).

New section (b)(2) imposes these limitations on the sponsorship program to ensure that it serves the public interest. The Secretary of the Interior shall approve all licenses or authorities for official sponsors and official supporters under this program, as well as competitive selection criteria. Official sponsors and official supporters must be selected competitively from candidates which meet the selection criteria. No license or authorization which would be detrimental to the goals or the public image of the National Park Service or the National Park System may be approved. To that end, another limitation requires that licensees' advertisements and other promotional activities be appropriate to the image of the National Park System and consistent with its management policies.

To meet a common concern expressed by witnesses and others during Committee consideration of the bill, official sponsorships of individual units of the National Park System are prohibited. Another provision provides statutory assurance that charitable organizations and cooperating associations may continue to engage in authorized fundraising and sales activities in support of parks, the Service, and the System, as long as those activities do not conflict with the Foundation's authority to license sponsorships or with the prohibition on individual park sponsorships. To avoid disruption of the successful and extensive efforts of the Statue of Liberty-Ellis Island Foundation, that foundation is authorized to continue fundraising for restoration activities associated with the Statue of Liberty and Ellis Island as provided under an agreement with the Sec-

retary of the Interior, including offering exclusive rights on third parties to use that foundation's trademarks, signs, etc.

New subsection (c) states that licenses and authorizations for sponsorship under subsection (b) do not confer a right or authority to sell or advertise their products or services within park units or in related, off-site facilities (for example, visitor centers built outside park boundaries). However, the Secretary may authorize limited recognition of official sponsors or supporters (as he may do for donors now), but only as allowed by approved policies and procedures, such as National Park Service donor recognition guidelines, so long as such recognition does not allow sponsors to commercially exploit their sponsor or supporter status within park units or related facilities. The sponsorship program will not influence what products are sold in parks by concessionaires under contract with the National Park Service, nor will it preclude the selling of merchandise bearing images or names of parks within park boundaries pursuant to the Concessions Policy Act of 1965 or elsewhere.

Paragraph 3 amends section 4 of the 1967 Act to modify the prohibition on the Foundation's ability to engage in business. The modification would prohibit the Foundation from conducting business for pecuniary profit or gain other than for the purpose of benefit to the National Park Service. The Foundation is prohibited from operating any commercial establishment or enterprise within a park. This paragraph also confirms the Foundation's practice of not engaging in lobbying activities relating to management of the National Park System.

Paragraph 4 provides a new subsection (b) to section 8 of the 1967 Act to require that all of the Foundation's income, less reasonable operating and other expenses, must be used to benefit the National Park Service. It further directs that income from the sponsorship program must be used to fund—in accordance with National Park Service policies and priorities—projects, programs, and activities identified by the Secretary in consultation with the Foundation.

Paragraph 5 amends section 10, the annual report provision, of the 1967 Act to impose two new reporting requirements. New subsection (b) requires the Foundation to forward copies of all approved sponsorship licenses and authorizations to Congress within 30 days of execution. New subsection (c) provides the Congress an opportunity to conduct informed oversight, and consider any alteration, expansion or reduction, of the sponsorship program. Within five years after enactment of this Act, the Secretary of the Interior is directed to submit a special report to Congress assessing the cost, effectiveness and effects of the sponsorship program. The report must include effects of the program on park visitation, the image of the National Park System, achievement of National Park Service needs and priorities, appropriations for the National Park Service, and program administration costs to both the agency and Foundation.

Paragraph 6 adds two new sections to the 1967 Act providing enforcement authority and an auditing requirement. Section 11 allows the Foundation to bring civil action under the Lanham Act against those who make unauthorized use of the Foundation's sponsorship program logos, slogans, etc. Section 12 requires the

Foundation to comply with the requirements of Public Law 88-504 as a federally chartered private corporation by preparing and submitting to Congress an annual audit of its accounts.

COST AND BUDGETARY CONSIDERATIONS

On June 20, 1996 the Committee on Energy and Natural Resources requested a Congressional Budget Office estimate on S. 1703. This estimate had not been received at the time the report on S. 1703 was filed. When this estimate becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1703. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1703, as ordered reported.

EXECUTIVE COMMUNICATIONS

On June 20, 1996, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 1703. These reports had not been received at the time the report on S. 1703 was filed. When these reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony of the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF ROGER G. KENNEDY, DIRECTOR OF THE NATIONAL PARK SERVICE, BEFORE THE SUBCOMMITTEE ON PARKS, HISTORIC PRESERVATION AND RECREATION OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES OF THE UNITED STATES SENATE ON S. 1703, A BILL TO AMEND THE ACT ESTABLISHING THE NATIONAL PARK FOUNDATION, JUNE 6, 1996

Thank you for the opportunity to offer the views of the Department of the Interior on S. 1703, a bill to amend the Act establishing the National Park Foundation. We support this bill if amended in conformance with this testimony. We strongly endorse the basic goal of S. 1703—to grant additional statutory authority to the National Park Foundation to allow it to realize more fully its potential as a support organization for the National Park Service and System. We also note that reinvigorating the National Park Foundation was a key provision of the President's

“Parks for Tomorrow” initiative announced on Earth Day. Expanding the Foundation’s authority, as envisioned in S. 1703, can be done in such a way that the integrity of the individual park units, the National Park System, and the agency are protected, and that the roles of other park partners in supporting the parks are preserved and reaffirmed. To meet those criteria for expanding the Foundation’s authority, we suggest several key amendments, that I will describe later in my testimony.

The National Park Foundation was established by Congress in 1967 to encourage, accept and administer gifts for the benefit of the National Park Service, its activities and its services. Since the National Park Foundation was established, Congress has created two other foundations charged with supporting land management agencies and their programs—the National Fish and Wildlife Foundation and the National Forest Foundation. While both were originally patterned after the National Park Foundation, their charters have been amended to allow them to engage in a greater variety of business activities to generate revenue to support their respective agencies and programs. We believe it is time to allow the National Park Foundation to exercise the same types of authorities.

The National Park Foundation has provided a commendable level of support to the National Park System and individual park units over its 29-year existence. With the help of private partners, the Foundation has made grants totaling more than \$10 million in the last five years to fund projects in the national parks. That such support is possible under the Foundation’s narrow existing statutory authority speaks well of the enthusiasm and expertise of its officials and staff. With the enactment of S. 1703, incorporating our recommended amendments, the Foundation will be poised to increase revenues exponentially and provide far greater support to National Park Service units and programs.

Mr. Chairman, we have identified five areas for amendment. First, we recommend that the stated purpose of the Foundation be amended to make clear that funds derived from its activities are intended to enhance Congressional appropriations rather than to supplant them. Second, we recommend modifications to the sponsorship program to protect park units and related facilities from commercialization. Third, we recommend adding language to clarify that the Foundation can retain funds from its total revenues only for “reasonable” operating expenses and that all other funds must be spent on established National Park Service priorities. Fourth, we recommend broadening the provision granting the Foundation the right to sue those who would misuse a logo or other feature associated with the sponsorship program. Fifth, we believe that the Foundation should provide information to Congress on an annual basis detailing the allocation and use of revenues generated by the sponsorship program.

Section 1 of the 1967 Act lays out the purpose for which the National Park Foundation was created and outlines the basic scope of support activities in which the Foundation can engage. We support the changes to that section as proposed in S. 1703, but recommend additional, qualifying language that conveys the intent to use funds generated by Foundation activities to *enhance* the funding the National Park Service receives through the annual appropriations process. These revenues should not be viewed as an alternative means to fund basic park operations, land acquisition, or construction projects.

The most important changes proposed by S. 1703 are in section 3 of the existing statute, the centerpiece of which is the authorization to undertake a corporate sponsorship program with the Foundation as exclusive agent to license official sponsors or supporters of the national parks. Under S. 1703, these sponsors and supporters would be approved by the Secretary of the Interior prior to licensing by the Foundation, and would be authorized to use a newly created logo and other program identifiers in commercial advertising to declare their status as official sponsors or supporters of the National Park System, National Park Service, or a particular unit of the National Park System. We support the concept of a sponsorship program managed by the Foundation for the benefit of the National Park Service, and believe there are appropriate ways in which official sponsors and supporters can use their sponsorship in commercial advertising. We do, however, have some concerns with the provisions in S. 1703 as drafted.

A corporate sponsorship program must not result in inappropriate commercialization of our national parks. We believe the potential for such commercialization is greatest if the entire field of individual park sponsorships opens up, as is possible under S. 1703. As a protection measure, we suggest that neither the Foundation nor the Secretary should be authorized to license corporate sponsorship of single national park units.

Our amendments do, however, acknowledge the work of the Statue of Liberty-Ellis Island Foundation, Inc., and would allow it to continue its current activities as authorized by the Secretary in a Memorandum of Agreement just last year. Its campaign has been the most successful fund-raising effort in the history of the National Park Service. The Statue of Liberty-Ellis Island Foundation has raised more than \$420 million and invested in the restoration of the Statue of Liberty and Main Building at Ellis Island, as well as other buildings and museum exhibits. The current agreement charges this foundation with raising funds and providing other assistance to establish an American Family Immigration History Center at Ellis Island, and to explore the options for rehabilitating the Baggage/Dormitory building to complete rehabilitation on the north side of Ellis Island. Adding a grandfather clause to the bill to

cover the Statue of Liberty-Ellis Island Foundation will ensure that these important projects will be completed.

Our proposed language in section 3 would not preclude corporations from making philanthropic donations to individual units, either directly or through the many park-specific, direct-support organizations or the Foundation. In fact, we recommend adding a proviso to clarify that the sponsorship program will not affect the fundraising or sales activities conducted by these recognized direct-support organizations as long as those fundraising or sales activities do not infringe upon the rights of official sponsors as reserved by the Foundation. We also recommend adding assurance that the sponsorship program will not result in corporate advertising within park units or associated facilities operated by the National Park Service outside park boundaries.

In addition to these changes, we recommend that the Secretary retain the flexibility to delegate the authority to approve each licensing agreement as he/she determines appropriate.

The bill does not give the Foundation or anyone the right to use the National Park Service arrowhead or any park symbol as part of the sponsorship program. A newly created logo, slogan and other identifiers will be developed for program sponsors. We do, however, recommend adding a provision that these program identifiers are property of the government and that the Foundation would be authorized to license their use to official sponsors and official supporters.

The language in S. 1703 restricting the use of certain types of intellectual property is too broad and may have the unintended effect of removing some images, photos, designs, etc., from the public domain. Our recommended amendment to section 3 will ensure that the bill will not remove from the public domain any intellectual property already in the public domain. We also recommend modifying section 11 as proposed in S. 1703, the provision regarding the Foundation's ability to bring civil action against those infringing on the use of program identifiers. We suggest an amendment to clarify that this authority is not solely restricted to actual use of a logo, slogan, etc., as grounds for civil action by the Foundation. This combination of provisions will make it more difficult for the value of the program identifiers to be reduced through misappropriation and give enforcement authority against those who might seek improperly to identify or imply that they are official sponsors of our national parks. The Foundation's symbols will also be protected under standard copyright laws.

We believe that removing the Foundation's existing prohibition on engaging in any business combined with authorization of a sponsorship program has the potential to produce substantially increased revenues. We recommend modifying section 8(b) to state that all of these revenues,

less “reasonable” operating expenses of the Foundation, must be directed at meeting established National Park Service priorities.

As noted above, expanding the Foundation’s authority should result in greater income. There should be accountability accompanying the use of funds. We recommend that documentation of the allocation and use of funds derived through the sponsorship program be added to the Foundation’s annual report to Congress, as required by section 10 of the 1967 Act. Additionally, we suggest a conforming amendment to Public Law 88–504, which would require the Foundation, as a federally chartered corporation, to conduct an annual, independent audit to be submitted to Congress.

Mr. Chairman, in addition to these programmatic and policy amendments, there are other technical and conforming amendments we recommend incorporating into S. 1703. Attached you will find the 1967 Act incorporating the provisions of S. 1703 and our proposed amendments which are shown in bolded text.

We are encouraged by the support for reinvigorating the National Park Foundation and the National Park Service as endorsed by the President’s “Parks for Tomorrow” initiative and in this legislation introduced by Senators Murkowski, Bennett, Chafee, Kempthorne, Johnston, and Lieberman. We believe the provisions of S. 1703, if amended as recommended in this testimony, will position the National Park Foundation to provide far greater support to the national parks than it can under the current statutory limitations. The time is right for corporate America to join the National Park Foundation in a productive national partnership to help the National Park Service, the United States Congress and the American people preserve our national parks for the future.

Mr. Chairman, this concludes my prepared remarks. We welcome the opportunity to work with members of the Committee where we have recommended changes to this bill. I would be pleased to answer any questions you may have at this time.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1703, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 90–209 (16 U.S.C. 19e-n)

AN ACT To establish the National Park Foundation

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,] *Be it enacted by the Senate and the House of Representatives of the United States of*

America in Congress assembled, That the Act of December 18, 1967 (U.S.C. 19e-19n), entitled "An Act to establish the National Park Foundation", is amended: That in order to encourage private gifts of real and personal property or any income therefrom or other interest [therein] therein, and to develop and implement means of securing funds from the private sector, to enhance funding for the National Park System without supplanting appropriated funds otherwise available for the National Park System; and for the benefit of, or in connection with, the National Park Service, its activities, or its services, and thereby to further the conservation of natural, scenic, historic, scientific, educational, inspirational, or recreational resources for future generations of Americans, there is hereby established a charitable and nonprofit corporation to be known as the National Park Foundation [to accept and administer such gifts].

SEC. 2. The National Park Foundation shall consist of a Board having as members the Secretary of the Interior, the Director of the National Park Service, ex officio, and no less than six private citizens of the United States appointed by the Secretary of the Interior whose initial terms shall be staggered to assure continuity of administration. Thereafter, the term shall be six years, unless a successor is chosen only for the remainder of that term. The Secretary of the Interior shall be the Chairman of the Board and the Director of the National Park Service shall be the Secretary of the Board. Membership on the Board shall not be deemed to be an office within the meaning of the Statutes of the United States. A majority of the members of the Board serving at any one time shall constitute a quorum for the transaction of business, and the Foundation shall have an official seal, which shall be judicially noticed. The Board shall meet at the call of the Chairman and there shall be at least one meeting each year.

No compensation shall be paid to the members of the Board for their services as members, but they shall be reimbursed for actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties as such members out of the National Park Foundation funds available to the Board for such purposes. The Foundation shall succeed all right, title and interest of the National Park Trust Fund Board established in any property or funds, including the National Park Trust Fund, subject to the terms and conditions thereof. The National Park Trust Fund is hereby abolished, and the Act of July 10, 1935 (49 Stat. 477; 16 U.S.C. 19 et seq.), as amended, is hereby repealed.

SEC. 3(a). The Foundation is authorized to accept, receive, solicit, hold, administer, and use any gifts, devises, or bequests, either absolutely or in trust of real or personal property or any income therefrom or other interest therein for the benefit of or in connection with, the National Park Service, its activities, or its services: Provided, that the Foundation may not accept any such gift, devise or bequest which entails any expenditure other than from the resources of the Foundation. An interest in the real property includes, among other things, easements or other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historic, scientific, educational, inspirational, or recreational resources. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or sub-

ject to beneficial interests of private persons if any current or future interest therein is for the benefit of the National Park Service, its activities, or its services

(b)(1) In furtherance of the purposes of this Act, the Foundation shall have exclusive authority to license or authorize persons to use such trademarks, tradenames, signs, symbols, emblems, insignias, logos, likenesses or slogans that are or may be in the future adopted and owned by the Foundation, and for which the Foundation has filed for an application or applications with the U.S. Patent and Trademark Office, for the purposes of representing, promoting or advertising for commercial purposes or pecuniary gain that an individual, company, or particular good or service is an official sponsor of the National Park System or National Park Service.

(2) The authority provided in paragraph (1) shall be subject to the following conditions:

(A) The criteria and guidelines for the competitive issuance and maintenance of a license or authorization, shall be subject to the prior written approval of the Secretary as being appropriate to the image of the National Park System and consistent with the management policies and practices of the National Park Service, and such approval authority may not be delegated.

(B) Neither the Secretary of the Interior, the Foundation, nor any other person may authorize an individual, company, or particular good or service to represent, promote, or advertise, and no person may represent or imply, for commercial purposes or for pecuniary gain that it is an official sponsor or official supporter of any individual unit of the National Park System.

(C) The advertisements and promotional activities undertaken by a licensee or authorized person shall be appropriate to the image of the National Park System and consistent with the management policies and practices of the National Park Service.

(D) Neither the Secretary of the Interior, the Foundation, nor any other person may authorize an individual, company, or particular good or service to represent that it is endorsed by the National Park Service.

(E) Nothing in this Act shall in any way restrict or preclude the Statue of Liberty-Ellis Island Foundation, Inc. (The "Statue of Liberty Foundation"), so long as its activities are authorized by a Memorandum of Agreement with the Secretary of the Interior, from raising donations for the restoration of the Statue of Liberty and Ellis Island by, among other things, offering to any third parties exclusive rights to any trademark, tradename, sign, symbol, insignia, emblem, logo, likeness, or slogan owned by the Statue of Liberty Foundation.

(F) Activities of the Foundation undertaken pursuant to this Act, including the licensing or authorizing of official sponsors and official supporters of the National Park System or National Park Service by the Foundation, shall not preclude charitable organizations or cooperating associations from conducting fund-raising activities or selling merchandise to generate support for a unit or units of the National Park System or the National Park Service, so long as such activities do not convey a right

to be considered as an official sponsor or supporter of such unit or units as prohibited by subparagraph (b) in any such unit or related facility: Provided, That the Secretary of the Interior may authorize limited recognition of the official sponsors or official supporters within the meaning of subsection (b) shall not be commercially exploited in any manner within any such unit or related facility.

SEC. 4. Except as otherwise required by the instrument of transfer and section 8(b), the Foundation may sell, lease, license, invest, reinvest, retain, or otherwise dispose of or deal with any property or income thereof as the Board may from time to time determine. The Foundation shall not engage in **any business**, nor shall the Foundation *business for pecuniary profit or gain, except for the purposes set forth in this Act; operate any commercial establishment or enterprise within any unit of the National Park System; engage in any lobbying activities as defined in section 3(7) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(7)) concerning the management of the National Park System; or make any investment that may not lawfully be made by a trust company in the District of Columbia, except that the Foundation may make any investment authorized by the instrument of transfer, and may retain any property accepted by the Foundation. The Foundation may utilize the services and facilities of the Department of the Interior and the Department of Justice, and such services and facilities may be made available on request to the extent practicable without reimbursement therefor.*

SEC. 5. The Foundation shall have perpetual succession, with all the usual powers and obligations of a corporation acting as a trustee, including the power to sue and to be sued in its own name, but the members of the Board shall not be personally liable, except for malfeasance.

SEC. 6. The Foundation shall have the power to enter into contracts, to execute instruments, and generally to do any and all lawful acts necessary or appropriate to its purposes.

SEC. 7. In carrying out the provisions of this Act, the Board may adopt bylaws, rules and regulations necessary for the administration of its functions and contract for any necessary services.

SEC. 8(a). The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto. The Foundation may, however, in the discretion of its directors, contribute toward the costs of local government in amounts not in excess of those which it would be obligated to pay such government if it were not exempt from taxation by virtue of the foregoing or by virtue of its being a charitable and nonprofit corporation and may agree so to contribute with respect to property transferred to it and the income derived therefrom if such agreement is a condition for the transfer. Contributions, gifts, and other transfers made to or for the use of the Foundation shall be regarded as contributions, gifts, or transfers to or for the use of the United States.

(b) All of the income in the Foundation, net of reasonable operating expenses, any contributions to local government pursuant to subsection (a), and reserves determined necessary or appropriate by

the Board, shall be provided to or for the benefit of the National Park Service: Provided, that all such net income derived from the licenses and authorizations referred to in section 3(b) shall be expended in accordance with policies and priorities of the National Park Service on programs, projects, or activities that benefit the National Park System or National Park Service as identified by the Secretary in consultation with the Foundation.

SEC. 9. The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation.

SEC. 10(a). The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, and investments.

(b) *Within thirty days of the execution of each license or authorization referred to in section 3(b), the Foundation shall transmit a copy thereof to the Committee on Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report assessing the cost, effectiveness, and effects of the licensing and authorization program established pursuant to section 3(b). The report shall include, but not be limited to, assessments of the effect of such program on—*

- (1) visitation levels in the National Park System;*
- (2) the image of the National Park System;*
- (3) achievement of the needs and priorities of the National Park Service;*
- (4) appropriations for the National Park System; and*
- (5) the costs of the Foundation and Secretary of the Interior to administer the program.*

SEC. 11. *Whoever without the authorization of the Foundation, uses for the purposes of trade, to induce the sale of any good or service, to promote any commercial activity, or for the commercial purpose the name of the Foundation or any trademark, tradename, sign, symbol, emblem, insignia, logo, likeness, or slogan referred to in section 3(b)(1), or any facsimile or simulation thereof tending to cause confusion, to cause mistake, to deceive, or to suggest falsely that an individual, company or particular good or service is an official sponsor or official supporter of the National Park System or National Park Service, shall be subject to suit in a civil action by the Foundation for the remedies provided by the Act of July 5, 1946, 60 Stat. 427 (15 U.S.C. sec. 1051, et seq.).*

SEC. 12. *Section 1 of Public Law 88-504 (36 U.S.C. 1101), as amended, is further amended by adding at the end, "(78) The National Park Foundation."*